

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
10

11 CHRISTINE E. GRAY,

12 Plaintiff(s),

13 v.

14 ANDREW SAUL,

15 Defendant(s).

Case No.: 2:19-cv-01546-KJD-NJK

Order

[Docket No. 1]

16 Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*
17 (Docket No. 1), and has submitted a Complaint (Docket No. 1-2).

18 **I. Application to Proceed *In Forma Pauperis***

19 Plaintiff filed an application to proceed *in forma pauperis*. Docket No. 1. The application
20 has sufficiently shown an inability to prepay fees and costs or give security for them. Accordingly,
21 the application to proceed *in forma pauperis* will be granted pursuant to § 1915. The Court will
22 now review Plaintiff's complaint.

23 **II. Screening the Complaint**

24 When a party seeks permission to pursue a civil case *in forma pauperis*, courts will screen
25 the complaint. *See* 28 U.S.C. § 1915(e). With respect to social security appeals specifically, judges
26 in this District have outlined some basic requirements for complaints to satisfy the Court's
27 screening. First, the complaint must establish that administrative remedies were exhausted
28 pursuant to 42 U.S.C. § 405(g), and that the civil action was commenced within 60 days after

1 notice of a final decision.¹ Second, the complaint must indicate the judicial district in which the
2 plaintiff resides. Third, the complaint must state the nature of the plaintiff's disability and when
3 the plaintiff claims to have become disabled. Fourth, the complaint must contain a plain, short,
4 and concise statement identifying the nature of the plaintiff's disagreement with the determination
5 made by the Social Security Administration and show that the plaintiff is entitled to relief. *See,*
6 *e.g., Graves v. Colvin*, 2015 WL 357121, *2 (D. Nev. Jan. 26, 2015) (collecting cases).

7 The complaint fails to show that this action was timely filed. In particular, it alleges that
8 the Appeals Council denied Plaintiff's request for review on June 28, 2019. Compl. at ¶ 8. This
9 case was initiated 68 days later on September 4, 2019. The complaint attempts to rectify the
10 untimeliness of the complaint by also alleging that a request was made to the Appeals Council to
11 extend the deadline. *Id.* No allegation is made that the request was actually granted, however, nor
12 was any such order attached as an exhibit.

13 **III. Conclusion**

14 Accordingly, the Court hereby **ORDERS** as follows:

- 15 1. Plaintiff's request to proceed *in forma pauperis* is **GRANTED** with the caveat that the
16 fees shall be paid if recovery is made. At this time, Plaintiff shall not be required to
17 pre-pay the filing fee.
 - 18 2. Plaintiff is permitted to maintain this action to conclusion without the necessity of
19 prepayment of any additional fees or costs or the giving of a security therefor. The
20 Order granting leave to proceed *in forma pauperis* shall not extend to the issuance of
21 subpoenas at government expense.
- 22
23
24
25

26 ¹ "The regulations further provide that receipt of notice of the Appeals Council decision is
27 presumed five days after the date of notice, unless there is a reasonable showing to the contrary."
28 *Bess v. Barnhart*, 337 F.3d 988, 989 (8th Cir. 2003). Hence, the presumptive deadline to initiate
judicial review is 65 days after the issuance of the Appeals Council decision. This deadline may
be extended by the Appeals Council upon a showing of good cause. 20 C.F.R. § 422.210(c).

1 3. The complaint is **DISMISSED** with leave to amend. Plaintiff will have until **October**
2 **16, 2019**, to file an amended complaint, if Plaintiff believes the noted deficiency can
3 be corrected.

4 IT IS SO ORDERED.

5 Dated: October 2, 2019

6
7 
8 _____
9 Nancy J. Koppe
10 United States Magistrate Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28